



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/717,401	11/19/2003	Randall J. Huebner	ACM 354	7508

23581 7590 07/22/2005

KOLISCH HARTWELL, P.C.
520 S.W. YAMHILL STREET
SUITE 200
PORTLAND, OR 97204

EXAMINER

RAMANA, ANURADHA

ART UNIT	PAPER NUMBER
----------	--------------

3732

DATE MAILED: 07/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/717,401

Applicant(s)

HUEBNER ET AL

Examiner

Anu Ramana

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 February 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-31 and 43-55 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-31 and 43-55 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 2/17/05.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-2, 4, 7-8, 10-24, 28, 30-31, 44, 47-52, 54 and 55 are rejected under 35 U.S.C. 102(e) as being anticipated by Aikins et al. (US 2003/0040748).

Aikins et al. disclose a bone plate 74 with predefined positions or holes (82, 88); a guide device with a coupling portion; a guide portion 234; a removably attached drill sleeve or cannula or guide element 240 with threads or "detent mechanism" 241; and an additional connective feature 92 (Figs. 6, 7, 12, 13, 15, 16, 19, 20, 22a, 24, 29, 32, paras [0062], [0063], [0074], [0075], [0076], [0089]).

Claims 1, 4, 7, 8, 10, 12, 14-19, 21-22 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Buzzi et al. (US 4,865,025).

Buzzi et al. disclose a guide device including a coupling portion 2'; a guide portion 12b disposed in a predefined relation to the bone repair device B so that the guide portion defines a guide axis through the bone and then to a connective feature t_2 on the bone repair device; a spacer portion 3a; a guide element 4 movable within frame 8 of guide portion 12b; a removable cannula 6; and a detent mechanism 9 (Figs. 4, 6-7, col. 4, lines 18-68, col. 5, lines 1-4, col. 7, lines 47-68 and col. 8, lines 1-9).

Claims 28, 30-31, 52, 54 and 55 are rejected under 35 U.S.C. 102(b) as being anticipated by Lowery et al. (US 5,364,399).

Lowery et al. disclose a guide device with a coupling portion 113; a guide portion 101 with a frame 110; a detent mechanism 105 provided on the guide portion 101; an additional connective feature 41; and a sleeve or "guide element" or "cannula" 130 movably coupled to frame 110 wherein the guide device is used to guide a hole forming tool or drill 104 to a predefined position 27 of the bone plate (Figs. 10 and 13, col. 5, lines 61-68, col. 6, lines 1-52, col. 9, lines 54-68, cols. 10 and 11 and col. 12, lines 1-17).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5-6, 27, 29, 43, 45, 46 and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aikins et al. (US 2003/0040748), as applied to claims 1, 15, 28, 44 and 52, further in view of Talos et al. (US 5,709,686).

Aikins et al. disclose all elements of the claimed invention except for threaded openings.

Talos et al. teach providing threaded openings in a bone plate to receive a screw with a threaded head (Fig. 1 and col. 1, lines 21-45).

Accordingly it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided threaded holes in the Aikins et al. plate, as taught by Talos et al., for receiving screws with threaded heads.

Claims 29 and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lowery et al. (US 5,364,399), as applied to claims 28 and 52, further in view of Talos et al. (US 5,709,686).

Lowery et al. disclose all elements of the claimed invention except for threaded openings in the bone plate.

Talos et al. teach providing threaded openings in a bone plate to receive a screw with a threaded head (Fig. 1 and col. 1, lines 21-45).

Accordingly it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided threaded holes in the Lowery et al. plate, as taught by Talos et al., for receiving screws with threaded heads.

Claims 5, 6 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buzzi et al. (US 4,865,025), as applied to claims 1 and 15, further in view of Perry (US 5,766,174).

Buzzi et al. disclose all elements of the claimed invention except for threaded openings on the bone repair device.

Perry teaches threaded openings 32a, 32b, 34a, 34b on a bone repair device to receive threaded screws (Fig. 3 and col. 5, lines 54-66 and col. 6, lines 1-4).

Accordingly it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided threaded holes in the Buzzi et al. bone repair device, as taught by Perry, to receive threaded screws.

Claims 9, 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aikins et al. (US 2003/0040748), as applied to claims 1 and 15, further in view of Cohen (US 6,540,753).

Aikins et al. disclose all elements of the claimed invention except for indicia on the guide element.

Cohen teaches providing indicia 36 on the guide shaft 40 of a drill instrument to monitor drilling depth (Fig. 1, col. 5, lines 66-67 and col. 6, lines 1-17).

Accordingly it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided indicia, as taught by Cohen, on the guide element of Aikins et al., to monitor drilling depth for placement of a screw.

Claims 9, 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buzzi et al. (US 4,865,025), as applied to claims 1 and 15, further in view of Cohen (US 6,540,753).

Buzzi et al. disclose all elements of the claimed invention except for indicia on the guide portion.

Cohen teaches providing indicia 36 on the guide shaft 40 of a drill instrument to monitor drilling depth (Fig. 1, col. 5, lines 66-67 and col. 6, lines 1-17).

Accordingly it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided indicia, as taught by Cohen, on the guide shaft or "cannula" of Buzzi et al., to monitor drilling depth for placement of a screw.

Allowable Subject Matter

The indicated allowability of claims 3, 4, 9-11, 13, 20-21, 25-26 and 29 is withdrawn in view of the rejections made in this office action.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anu Ramana whose telephone number is (571) 272-4718. The examiner can normally be reached Monday through Friday between 8:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached at (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3732

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AR *Anuradha Ramana*
July 14, 2005

Kevin Shaver
KEVIN SHAVER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700